IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.6070 OF 2007

M/s.Venky's India Limited .. Petitioner
Versus
Union of India & Others .. Respondents

Mr.M.R. Baya for the Petitioner.
Mr.R. Ashokan for the respondent-Union of India.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 18TH OCTOBER, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The petitioner preferred an appeal before the Commissioner of Customs (Appeals) in respect of a product described as Lutavit. The Commissioner (Appeals) by an interim order was pleased to direct deposit of 50% of differential duty demanded. That was the subject matter a petition preferred before this Court. Notice was issued to the respondents. During the pendency of this petition, Commissioner (Appeals) by his order dated 11-9-2007 was pleased to dismiss the appeal on the ground of failure by the petitioner herein to pre-deposit the amount as directed. The Commissioner (Appeals) is Respondent No.3 in this petition. Appearance was put up on his behalf. In such matters, surely an opportunity should have been given to the petitioner either to approach this Court for a stay or other appropriate

relief without dismissing the appeal.

. We must remind the appellate authorities that in such matters, no doubt as there was no stay, they could have proceeded to pass orders, but before passing such an order dismissing an appeal, an opportunity could have been given to the petitioner to move this Court to seek appropriate relief. The object should be not to increase litigation but as far as possible to avoid more litigation.

3. In the instant case, the very product in issue was the subject matter of a Writ Petition filed before this Court, being Writ Petition No.630 of 1995. One Mr.R.D. More, Assistant Commissioner had filed an affidavit before this Court on 13-10-2003, wherein it was set out as under :

> "I say and submit that in the present petition essentially only one issue is involved i.e. classification dispute of imported product item’s (1) ALBAC Feed Supplement 15% (Zinc Bacitracin) (ii) AB2D3K Kant 3 Feed Supplement Mixture (iii) Lutavit Blend AB2D3K."

. It was then set out that the issue of classification in respect of these products was

covered by the judgment of the Supreme Court in Collector of Central Excise, Bangalore V/s. Tetragon Chemie (P) Ltd., [2001(132) E.L.T. 525 (S.C.)] and ratio of that judgment covers the issue involved in that petition.

. On the basis of this affidavit, a learned Bench of this Court by order dated 19th January, 2005 made the rule absolute in terms of prayer clause (a). Subsequent to that also, petitioner had filed one more petition being Writ Petition No.2382 of 2000. That petition was also came to be disposed of in favour of the petitioners by order dated 15-5-2006, as in the in the meantime the Supreme Court has also pronounced judgments in some other matters.

. The learned Authority below on some material, first referred to Albac Feed Supplement and its constituents as set out in para 10 and thereafter proceeded to hold that it would fall under classification CTH 29.36. The contention of the petitioner is that the product which was the subject matter and which was before the Commissioner (Appeals) was the same product when the issue was before this Court and the issue had been answered in favour of the petitioner.

4. In our opinion, considering the earlier decision of this Court in respect of the very same product, the commissioner (Appeals) ought to have exercised its jurisdiction and not directed pre-deposit as ordered, unless the order of the A.O. clearly demonstrate that the product would not fall in the same classification as held by this Court. Prima facie that was not so. Consequently, the order dismissing appeal for failure to pre-deposit as also order of pre-deposit are set aside and the appeal restored to be heard on merits without pre-deposit.

5. Rule is made absolute accordingly with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)